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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MARK GONZALEZ,
individually, and on behalf of all
others similarly situated

Plaintiff,

v.

T10NCO, LLC, and DOES 1
through 10, inclusive

Defendants.

Case No.: 3:20-cv-7904

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. § 227, ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1. MARK GONZALEZ (“Plaintiff”) bring this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of T10NCO, LLC, (“Defendant”), in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to

1 himself and his own acts and experiences, and, as to all other matters, upon
2 information and belief, including investigation conducted by their attorneys.

3 2. The TCPA was designed to prevent calls and messages like the ones
4 described within this complaint, and to protect the privacy of citizens like Plaintiff.
5 “Voluminous consumer complaints about abuses of telephone technology – for
6 example, computerized calls dispatched to private homes – prompted Congress to
7 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

8 3. In enacting the TCPA, Congress intended to give consumers a choice
9 as to how creditors and telemarketers may call them, and made specific findings
10 that “[t]echnologies that might allow consumers to avoid receiving such calls are
11 not universally available, are costly, are unlikely to be enforced, or place an
12 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this
13 end, Congress found that
14

15 [b]anning such automated or prerecorded telephone calls to the home,
16 except when the receiving party consents to receiving the call or when
17 such calls are necessary in an emergency situation affecting the health
18 and safety of the consumer, is the only effective means of protecting
19 telephone consumers from this nuisance and privacy invasion.

20 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
21 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
22 purpose).

23 4. Congress also specifically found that “the evidence presented to the
24 Congress indicates that automated or prerecorded calls are a nuisance and an
25 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also,
26 *Mims*, 132 S. Ct. at 744.

27 5. As Judge Easterbrook of the Seventh Circuit recently explained in a
28 TCPA case regarding calls to a non-debtor similar to this one:

1
2 The Telephone Consumer Protection Act ... is well known for its
3 provisions limiting junk-fax transmissions. A less-litigated part of the
4 Act curtails the use of automated dialers and prerecorded messages to
5 cell phones, whose subscribers often are billed by the minute as soon
6 as the call is answered—and routing a call to voicemail counts as
7 answering the call. An automated call to a landline phone can be an
8 annoyance; an automated call to a cell phone adds expense to
9 annoyance.

10 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

11 6. The Ninth Circuit recently affirmed certification of a TCPA class case
12 remarkably similar to this one in *Meyer v. Portfolio Recovery Associates, LLC*, __
13 F.3d __, 2012 WL 4840814 (9th Cir. Oct. 12, 2012).

14 JURISDICTION AND VENUE

15 7. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
16 a resident of California, seeks relief on behalf of a Class, which will result in at
17 least one class member belonging to a different state than that of Defendant, a
18 California limited liability company doing business within and throughout
19 California. Plaintiff also seeks \$1,500.00 in damages for each call in violation of
20 the TCPA, which, when aggregated among a proposed class in the thousands,
21 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both
22 diversity jurisdiction and the damages threshold under the Class Action Fairness
23 Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

24 8. Venue is proper in the United States District Court for the Northern
25 District of California pursuant to 28 U.S.C. § 1391(b)(1) because Defendant is
26 subject to personal jurisdiction in the County of Alameda, State of California.

27 PARTIES

1 9. Plaintiff is, and at all times mentioned herein was, a natural person
2 and citizen and resident of the State of California. Plaintiff is, and at all times
3 mentioned herein was, a “person” as defined by 47 U.S.C. § 153(39).

4 10. Defendant is, and at all times mentioned herein was, an online
5 dispensary for cannabis company, and is therefore a “person” as defined by 47
6 U.S.C. § 153(39).

7 11. The above named Defendant, and its subsidiaries and agents, are
8 collectively referred to as “Defendants.” The true names and capacities of the
9 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
10 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
11 names. Each of the Defendants designated herein as a DOE is legally responsible
12 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
13 Complaint to reflect the true names and capacities of the DOE Defendants when
14 such identities become known.
15

16 12. Plaintiff is informed and believes that at all relevant times, each and
17 every Defendant was acting as an agent and/or employee of each of the other
18 Defendants and was acting within the course and scope of said agency and/or
19 employment with the full knowledge and consent of each of the other Defendants.
20 Plaintiff is informed and believes that each of the acts and/or omissions complained
21 of herein was made known to, and ratified by, each of the other Defendants.

22 **FACTUAL ALLEGATIONS**

23 13. At all times relevant, Plaintiff was a citizen of the County of Alameda,
24 State of California. Plaintiff is, and at all times mentioned herein was, a “person”
25 as defined by 47 U.S.C. § 153(39).

26 14. Defendant is, and at all times mentioned herein was, a “person,” as
27 defined by 47 U.S.C. § 153(39).
28

1 15. At all times relevant Defendant conducted business in the State of
2 California and in the County of Alameda, within this judicial district.

3 16. In or about May of 2020, Plaintiff received an unsolicited text message
4 from Defendant on his cellular telephone, number ending in -6544.

5 17. During this time, Defendant began to use Plaintiff's cellular telephone
6 for the purpose of sending Plaintiff spam advertisements and/or promotional offers,
7 via text messages, including a text message sent to and received by Plaintiff on or
8 about May 16, 2020 from Defendant's phone number, (833) 959-1443.

9 18. On May 16, 2020, Plaintiff received a text from Defendant that read:

10 10co: Happy Saturday 10co
11 Family: Saturday deals. Call or
12 text for more details
13 4159665941
14

15 19. This text message placed to Plaintiff's cellular telephone was placed
16 via Defendant's *SMS Blasting Platform*, i.e., an "automatic telephone dialing
17 system," ("ATDS") as defined by 47 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C.
18 § 227 (b)(1)(A).

19 20. The telephone number that Defendant, or their agent, called was
20 assigned to a cellular telephone service for which Plaintiff incurs a charge for
21 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

22 21. These telephone calls constituted calls that were not for emergency
23 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

24 22. Plaintiff was never a customer of Defendant's and never provided his
25 cellular telephone number Defendant for any reason whatsoever. Accordingly,
26 Defendant and their agent never received Plaintiff's prior express consent to
27 receive unsolicited text messages, pursuant to 47 U.S.C. § 227 (b)(1)(A).
28

1 23. These telephone calls by Defendant, or its agents, violated 47 U.S.C.
2 § 227(b)(1).

3 **CLASS ACTION ALLEGATIONS**

4 24. Plaintiff brings this action on behalf of himself and on behalf of and
5 all others similarly situated (“the Class”).

6 25. Plaintiff represents, and is a member of, the Class, consisting of all
7 persons within the United States who received any unsolicited text messages from
8 Defendant which text message was not made for emergency purposes or with the
9 recipient’s prior express consent within the four years prior to the filing of this
10 Complaint.

11 26. Defendant and their employees or agents are excluded from the Class.
12 Plaintiff does not know the number of members in the Class, but believes the Class
13 members number in the hundreds of thousands, if not more. Thus, this matter
14 should be certified as a Class action to assist in the expeditious litigation of this
15 matter.
16

17 27. Plaintiff and members of the Class were harmed by the acts of
18 Defendant in at least the following ways: Defendant, either directly or through their
19 agents, illegally contacted Plaintiff and the Class members via their cellular
20 telephones by using marketing and text messages, thereby causing Plaintiff and the
21 Class members to incur certain cellular telephone charges or reduce cellular
22 telephone time for which Plaintiff and the Class members previously paid, and
23 invading the privacy of said Plaintiff and the Class members. Plaintiff and the
24 Class members were damaged thereby.

25 28. This suit seeks only damages and injunctive relief for recovery of
26 economic injury on behalf of the Class, and it expressly is not intended to request
27 any recovery for personal injury and claims related thereto. Plaintiff reserves the
28

1 right to expand the Class definition to seek recovery on behalf of additional persons
2 as warranted as facts are learned in further investigation and discovery.

3 29. The joinder of the Class members is impractical and the disposition of
4 their claims in the Class action will provide substantial benefits both to the parties
5 and to the court. The Class can be identified through Defendant's records or
6 Defendant's agent's records.

7 30. There is a well-defined community of interest in the questions of law
8 and fact involved affecting the parties to be represented. The questions of law and
9 fact to the Class predominate over questions which may affect individual Class
10 members, including the following:

- 11 a) Whether, within the four years prior to the filing of this Complaint,
12 Defendant or their agents sent any text messages to the Class (other
13 than a message made for emergency purposes or made with the prior
14 express consent of the called party) to a Class member using any
15 automatic dialing system to any telephone number assigned to a
16 cellular phone service;
17
18 b) Whether Plaintiff and the Class members were damaged thereby, and
19 the extent of damages for such violation; and
20
21 c) Whether Defendant and their agents should be enjoined from
22 engaging in such conduct in the future.

23 31. As a person that received at least one marketing and text message
24 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
25 typical of the Class. Plaintiff will fairly and adequately represent and protect the
26 interests of the Class in that Plaintiff has no interests antagonistic to any member
27 of the Class.

28 32. Plaintiff and the members of the Class have all suffered irreparable
harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class

1 action, the Class will continue to face the potential for irreparable harm. In
2 addition, these violations of law will be allowed to proceed without remedy and
3 Defendant will likely continue such illegal conduct. Because of the size of the
4 individual Class member's claims, few, if any, Class members could afford to seek
5 legal redress for the wrongs complained of herein.

6 33. Plaintiff has retained counsel experienced in handling class action
7 claims and claims involving violations of the Telephone Consumer Protection Act.

8 34. A class action is a superior method for the fair and efficient
9 adjudication of this controversy. Class-wide damages are essential to induce
10 Defendant to comply with federal and California law. The interest of Class
11 members in individually controlling the prosecution of separate claims against
12 Defendant are small because the maximum statutory damages in an individual
13 action for violation of privacy are minimal. Management of these claims is likely
14 to present significantly fewer difficulties than those presented in many class claims.

15 35. Defendant has acted on grounds generally applicable to the Class,
16 thereby making appropriate final injunctive relief and corresponding declaratory
17 relief with respect to the Class as a whole.

18
19 **FIRST CAUSE OF ACTION**

20 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

21 **47 U.S.C. § 227 ET SEQ.**

22 36. Plaintiff incorporates by reference all of the above paragraphs of this
23 Complaint as though fully stated herein.

24 37. The foregoing acts and omissions of Defendant constitute numerous
25 and multiple negligent violations of the TCPA, including but not limited to each
26 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.
27
28

1 38. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et
2 seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory
3 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

4 39. Plaintiff and the Class are also entitled to and seek injunctive relief
5 prohibiting such conduct in the future.

6 **SECOND CAUSE OF ACTION**
7 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
8 **TELEPHONE CONSUMER PROTECTION ACT**
9 **47 U.S.C. § 227 ET SEQ.**

10 40. Plaintiff incorporates by reference all of the above paragraphs of this
11 Complaint as though fully stated herein.

12 41. The foregoing acts and omissions of Defendant constitute numerous
13 and multiple knowing and/or willful violations of the TCPA, including but not
14 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et
15 seq.

16 42. As a result of Defendant's knowing and/or willful violations of 47
17 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00
18 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §
19 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

20 43. Plaintiff and the Class are also entitled to and seek injunctive relief
21 prohibiting such conduct in the future.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff, and The
24 Class members the following relief against Defendant:
25

26 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
27 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**
28

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

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TRIAL BY JURY

44. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: November 10, 2020

Respectfully submitted,

THE LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
TODD M. FRIEDMAN, ESQ.
ATTORNEY FOR PLAINTIFF